

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

KHP III SF Sutter LLC, a
Delaware Limited Liability
Company;

**Kimpton Hotel & Restaurant
Group, LLC,** a Delaware Limited
Liability Company;

Defendants

Case No. 3:21-cv-01275-JD

UNLIMITED CIVIL CASE

**First Amended Complaint For
Damages And Injunctive
Relief For Violations Of:**
Americans With Disabilities Act;
Unruh Civil Rights Act

Plaintiff Orlando Garcia complains of KHP III SF Sutter LLC, a Delaware Limited Liability Company; Kimpton Hotel & Restaurant Group, LLC, a Delaware Limited Liability Company; (“Defendants”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from cerebral palsy. He

1 has the use of only one arm. He uses a wheelchair, walker, or cane for mobility.

2 2. Defendant KHP III SF Sutter LLC, a Delaware Limited Liability
3 Company, owns the Kimpton Buchanan Hotel located at 1800 Sutter St., San
4 Francisco, California, currently and at all times relevant to this complaint.
5 Defendant Kimpton Hotel & Restaurant Group, LLC, a Delaware Limited
6 Liability Company, operates the hotel currently and at all times relevant to this
7 complaint.

8 3. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein, is
13 responsible in some capacity for the events herein alleged, or is a necessary
14 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
15 the true names, capacities, connections, and responsibilities of the Defendants
16 are ascertained.

17 **JURISDICTION:**

18 4. The Court has subject matter jurisdiction over the action pursuant to 28
19 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 5. Pursuant to supplemental jurisdiction, an attendant and related cause
22 of action, arising from the same nucleus of operative facts and arising out of
23 the same transactions, is also brought under California's Unruh Civil Rights
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

28

1 **PRELIMINARY STATEMENT**

2 7. This is a lawsuit challenging the reservation policies and practices of a
3 place of lodging. Plaintiff does not know if any physical or architectural
4 barriers exist at the hotel and, therefore, is not claiming that the hotel has
5 violated any construction-related accessibility standard. Instead, this is about
6 the lack of information provided on the hotel's reservation website that would
7 permit plaintiff to determine if there are rooms that would work for him.

8 8. After decades of research and findings, Congress found that there was
9 a "serious and pervasive social problem" in America: the "discriminatory
10 effects" of communication barriers to persons with disability. The data was
11 clear and embarrassing. Persons with disabilities were unable to "fully
12 participate in all aspects of society," occupying "an inferior status in our
13 society," often for no other reason than businesses, including hotels and
14 motels, failed to provide information to disabled travelers. Thus, Congress
15 decided "to invoke the sweep of congressional authority" and issue a "national
16 mandate for the elimination of discrimination against individuals with
17 disabilities," and to finally ensure that persons with disabilities have "equality
18 of opportunity, full participation, independent living" and self-sufficiency.

19 9. As part of that effort, Congress passed detailed and comprehensive
20 regulations about the design of hotels and motels. But, as importantly,
21 Congress recognized that the physical accessibility of a hotel or motel means
22 little if the 61 million adults living in America with disabilities are unable to
23 determine which hotels/motels are accessible and to reserve them. Thus,
24 there is a legal mandate to provide a certain level of information to disabled
25 travelers.

26 10. But despite the rules and regulations regarding reservation procedures,
27 a 2019 industry article noted that: "the hospitality sector has largely
28 overlooked the importance of promoting accessible features to travelers."

1 11. These issues are of paramount important. Persons with severe
2 disabilities have modified their own residences to accommodate their unique
3 needs and to ameliorate their physical limitations. But persons with disabilities
4 are never more vulnerable than when leaving their own residences and having
5 to travel and stay at unknown places of lodging. They must be able to ascertain
6 whether those places work for them.

7
8 **FACTUAL ALLEGATIONS:**

9 12. Plaintiff planned on making a trip in August of 2021 to the San
10 Francisco, California, area.

11 13. He chose the Kimpton Buchanan Hotel located at 1800 Sutter St., San
12 Francisco, California because this hotel was at a desirable price and location.

13 14. Due to Plaintiff's condition, he is unable to, or seriously challenged in
14 his ability to, stand, ambulate, reach objects mounted at heights above his
15 shoulders, transfer from his chair to other equipment, and maneuver around
16 fixed objects.

17 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given
18 information about accessible features in hotel rooms so that he can confidently
19 book those rooms and travel independently and safely.

20 16. On January 31, 2021, while sitting bodily in California, Plaintiff went to
21 the Kimpton Buchanan Hotel reservation website at
22 <https://www.thebuchananhotel.com/> seeking to book an accessible room at
23 the location.

24 17. This website reservation system is owned and operated by the
25 Defendants and permits guests to book rooms at Kimpton Buchanan Hotel.

26 18. Plaintiff found that there was insufficient information about the
27 accessible features in the "accessible rooms" at the Hotel to permit him to
28 assess independently whether a given hotel room would work for him.

1 19. For example, Plaintiff needs a mirror mounted at a compliant height in
2 the bathroom so he can see himself. There is no mention whether the mirror is
3 mounted at the correct height. This leaves Plaintiff wondering if he can use the
4 mirror.

5 20. As another example, Plaintiff cannot transfer from his wheelchair to a
6 toilet unless there are grab bars at the toilet to facilitate that transfer. But the
7 Hotel reservation website does not provide any information about the
8 existence of grab bars for the accessible guestroom toilets. This is critical
9 information for the plaintiff.

10 21. As another example, Plaintiff has had tremendous difficulty with using
11 lavatory sinks in the past because sinks were cabinet style sinks or had low
12 hanging aprons that did not provide knee clearance for a wheelchair user to
13 pull up and under or, alternatively, where the plumbing underneath the sink
14 was not wrapped with insulation to protect against burning contact to his
15 knees. Here, the Hotel reservation website provides no information about the
16 accessibility of the sinks in the accessible guestroom.

17 22. As another example, Plaintiff needs doorways that are at least 32 inches
18 wide so he can get his wheelchair through. Without this feature, Plaintiff risks
19 getting stuck in a doorway, or being prevented from passing through the
20 doorway at all. The website does not mention that the hotel room has this
21 feature.

22 23. As another example, a desk or table is an important part of a hotel room.
23 People eat and work at tables. However, if the table does not have compliant
24 knee space underneath it, a person in a wheelchair cannot pull their chair
25 under the table, rendering it unusable. A single sentence “The table provides
26 knee clearance of at least 27 inches high for at least 8 inches in depth” would
27 ensure that persons in wheelchairs can assess if the table works for them. Here,
28 the hotel says nothing.

1 24. As another example, Plaintiff often uses a type of wheelchair that he
2 cannot get wet when he showers. He needs to roll into the shower enclosure
3 and then transfer to an in-shower seat and push his chair out of the path of the
4 water. But there is no information on the Hotel reservation website about
5 whether the roll-in shower has an in-shower seat or any grab bars mounted
6 above the seat for transfer (required by the ADA). So, Plaintiff can assume he
7 can roll into that shower but has no other information about whether he can
8 use this shower.

9 25. Plaintiff does not need an exhaustive list of accessibility features.
10 Plaintiff does not need an accessibility survey to determine if a room works for
11 him. Plaintiff, like the vast majority of wheelchair users, simply needs a
12 handful of features to be identified and described with a modest level of detail:

- 13 • For the doors, Plaintiff simply needs to know if he can get into the hotel
14 room and into the bathroom. This is a problem that has created
15 tremendous problems for the Plaintiff in the past. A simple statement
16 that the hotel room entrance and interior doors provide at least 32
17 inches of clearance is enough to provide Plaintiff this critical piece of
18 information about whether he can fit his wheelchair into the hotel
19 rooms.
- 20 • For the beds themselves, the only thing Plaintiff needs to know (and the
21 only thing regulated by the ADA Standards) is whether he can actually
22 get to (and into) the bed, i.e., that there is at least 30 inches width on the
23 side of the bed so his wheelchair can get up next to the bed for transfer.
24 This is critical information because Plaintiff cannot walk and needs to
25 pull his wheelchair alongside the bed.
- 26 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to
27 know that it has sufficient knee and toe clearance so that he can use it.
28 A simple statement like “the desk provides knee and toe clearance that

1 is at least 27 inches high, 30 inches wide, and runs at least 17 inches
2 deep” is more than sufficient. Because Plaintiff is confined to a
3 wheelchair, he needs to know this information to determine if the desk
4 is accessible to and useable by him.

- 5 • For the restroom toilet, Plaintiff only needs to know two things that
6 determine if he can transfer to and use the toilet; (1) that the toilet seat
7 height is between 17-19 inches (as required by the ADA Standards) and
8 (2) that it has the two required grab bars to facilitate transfer.
- 9 • For the restroom sink, the Plaintiff two things that will determine
10 whether he can use the sink from his wheelchair: (1) can he safely get his
11 knees under the toilet? To wit: does the sink provide the knee clearance
12 (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing
13 under the sink wrapped with insulation to protect against burning
14 contact? The second thing is whether the lavatory mirror is mounted at
15 a lowered height so that wheelchair users can see it. A simple statement
16 like: “the lavatory sink provides knee clearance of at least 30 inches
17 wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing
18 is wrapped, and the lowest reflective edge of the mirror is no more than
19 40 inches high” would suffice.
- 20 • Finally, for the shower, Plaintiff needs to know only a handful of things:
21 (1) what type of shower it is (transfer, standard roll-in, or alternate roll-
22 in), (2) whether it has an in-shower seat; (3) that there are grab bars
23 mounted on the walls; (4) that there is a detachable hand-held shower
24 wand for washing himself and (5) that the wall mounted accessories and
25 equipment are all within 48 inches height.

26 26. This small list of items are the bare necessities that Plaintiff must know
27 to make an independent assessment of whether the “accessible” hotel room
28 works for him. These things comprise the basics of what information is

1 reasonably necessary for Plaintiff (or any wheelchair user) to assess
2 independently whether a given hotel or guest room meets his or her
3 accessibility needs.

4 27. Other accessibility requirements such as slopes of surfaces, whether the
5 hand-held shower wand has a non-positive shut off valve, the temperature
6 regulator, the tensile strength and rotational design of grab bars, and so many
7 more minute and technical requirements under the ADA are beyond what is a
8 reasonable level of detail and Plaintiff does not expect or demand that such
9 information is provided.

10 28. But because the Defendants have failed to identify and describe the core
11 accessibility features in enough detail to reasonably permit individuals with
12 disabilities to assess independently whether a given hotel or guest room meets
13 his accessibility needs, the Defendants fail to comply with its ADA obligations
14 and the result is that the Plaintiff is unable to engage in an online booking of
15 the hotel room with any confidence or knowledge about whether the room will
16 actually work for him due to his disability.

17 29. This lack of information created difficulty for the Plaintiff and the idea
18 of trying to book this room -- essentially ignorant about its accessibility --
19 caused difficulty and discomfort for the Plaintiff and deterred him from
20 booking a room at the Hotel.

21 30. As a veteran ADA tester, Plaintiff is aware that he needs to return to the
22 hotel website and to patronize the hotel in order to have standing to see that
23 the hotel comes into compliance with the ADA's mandate regarding its
24 reservation policies. Thus, plaintiff will use the hotel's website reservation
25 system to book a room and travel to the hotel when it has been represented to
26 him that the hotel's website reservation system is accessible. Plaintiff will be
27 discriminated against again, i.e., be denied his lawfully entitled access, unless
28 and until the defendant is complies with the law.

1 31. Plaintiff would like to patronize this hotel but is deterred from doing so
2 because of the lack of detailed information through the hotel's reservation
3 system.

4 32. Plaintiff will travel to the area on a regular and ongoing basis and will
5 patronize this Hotel once it has been represented to him that the Defendant
6 has changed its policies to comply with the law and to determine if the Hotel is
7 physically accessible as well as complying with required reservation
8 procedures. Plaintiff will, therefore, be discriminated against again, i.e., be
9 denied his lawfully entitled access, unless and until the Defendant is forced to
10 comply with the law.

11 33. Plaintiff has reason and motivation to use the Defendant's Hotel
12 reservation system and to stay at the Defendant's Hotel in the future. Among
13 his reasons and motivations are to assess these policies and facilities for
14 compliance with the ADA and to see his lawsuit through to successful
15 conclusion that will redound to the benefit of himself and all other similarly
16 situated. Thus, Plaintiff routinely revisits and uses the facilities and
17 accommodations of places he has sued to confirm compliance and to enjoy
18 standing to effectuate the relief promised by the ADA.

19 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

20 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
21 Defendants.) (42 U.S.C. section 12101, et seq.)

22 34. Plaintiff re-pleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint.

25 35. Under the ADA, it is an act of discrimination to fail to make reasonable
26 modifications in policies, practices, or procedures when such modifications
27 are necessary to afford goods, services, facilities, privileges advantages or
28 accommodations to person with disabilities unless the entity can demonstrate

1 that taking such steps would fundamentally alter the nature of the those goods,
2 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
3 12182(B)(2)(A)(ii).

4 36. Specifically, with respect to reservations by places of lodging, a
5 defendant must ensure that its reservation system, including reservations
6 made by “any means,” including by third parties, shall:

- 7 a. Ensure that individuals with disabilities can make
8 reservations for accessible guest rooms during the same
9 hours and in the same manner as individuals who do not
10 need accessible rooms;
11 b. Identify and describe accessible features in the hotels and
12 guest rooms offered through its reservations service in
13 enough detail to reasonably permit individuals with
14 disabilities to assess independently whether a given hotel
15 or guest room meets his or her accessibility needs; and
16 c. Reserve, upon request, accessible guest rooms or specific
17 types of guest rooms and ensure that the guest rooms
18 requested are blocked and removed from all reservations
19 systems.

20 *See* 28 C.F.R. § 36.302(e).

21 37. Here, the defendant failed to modify its reservation policies and
22 procedures to ensure that it identified and described accessible features in the
23 hotels and guest rooms in enough detail to reasonably permit individuals with
24 disabilities to assess independently whether a given hotel or guest room meets
25 his or her accessibility needs and failed to ensure that individuals with
26 disabilities can make reservations for accessible guest rooms during the same
27 hours and in the same manner as individuals who do not need accessible
28 rooms.

1
2 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
3 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
4 Code § 51-53.)

5 38. Plaintiff repleads and incorporates by reference, as if fully set forth
6 again herein, the allegations contained in all prior paragraphs of this
7 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
8 that persons with disabilities are entitled to full and equal accommodations,
9 advantages, facilities, privileges, or services in all business establishment of
10 every kind whatsoever within the jurisdiction of the State of California. Cal.
11 Civ. Code § 51(b).

12 39. The Unruh Act provides that a violation of the ADA is a violation of the
13 Unruh Act. Cal. Civ. Code, § 51(f).

14 40. Defendants’ acts and omissions, as herein alleged, have violated the
15 Unruh Act by, inter alia, failing to comply with the ADA with respect to its
16 reservation policies and practices.

17 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty
18 and discomfort for the plaintiff, the defendants are also each responsible for
19 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

20
21 **PRAYER:**

22 Wherefore, Plaintiff prays that this Court award damages and provide
23 relief as follows:

24 1. For injunctive relief, compelling Defendants to comply with the
25 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
26 plaintiff is not invoking section 55 of the California Civil Code and is not
27 seeking injunctive relief under the Disabled Persons Act at all.
28

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

4. For equitable nominal damages for violation of civil rights. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court finds appropriate.

Dated: May 7, 2021

CENTER FOR DISABILITY ACCESS

By: //s// Russell Handy
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